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December 8, 2010

U.S. Army Corps of Engineers
Denver Regulatory Office
9307 South Wadsworth Blvd.
Littleton, CO 80128-6901

Attn: Matt Montgomery

Re: *Lack of water rights shown by Mile High Wetlands Bank, Prospectus Document
for Phase II*

Dear Mr. Montgomery:

This law firm has been retained by Middle South Platte River Wetlands Bank to comment on the availability of water rights to support Mile High Wetlands Bank. Mile High Wetlands Bank (the Bank) is located in Beebe Draw, as noted in the prospectus. The water rights rules for Beebe Draw were recently constrained and clarified by Judge Klein, in the Water Court Case No. 02CW403, after a 16-day trial. I was one of the counsel who actively participated in that trial. The Division Engineer for the Colorado Division of Water Resources, Jim Hall, and his counsel, Assistant Attorney General Chad Wallace, also participated extensively in the trial. The ruling in the 403 case makes it clear that Mile High Wetlands Bank LLC has not demonstrated a water right which is sufficiently reliable to serve the Bank. The 403 case also makes it clear that Farmers Reservoir and Irrigation Company, as an entity, has no reliable water which it can provide for irrigation of the Bank. Finally, Phase II may include construction of a well by excavating soil to expose groundwater, which will require a well permit and an augmentation plan, neither of which has been obtained. I will discuss each of these problems below.

Section IV E of the Prospectus identifies the water right decree for Bowles and Meeks Reservoirs as the source of water for the wetland. It identifies as a source both seepage collected in the reservoirs and direct diversions for storage from the South Platte River. The seepage cannot be lawfully diverted. The 1907 Bowles Reservoir right lacks storage capacity and is too junior to provide reliable water for irrigation during much of the year. Farmers Reservoir and Irrigation Company is the record owner of the Bowles and Meeks decree, and is a co-owner of Mile High Wetlands Bank LLC.

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The decree in the 403 case makes it clear that seepage in Beebe Draw is not a lawful source of supply for FRICO. The seepage is tributary to the river and may not be captured without a decree which is in priority. See Sections 22.2, 22.3 and 25.1 of the 403 decree (copies attached). (That ruling is under appeal to the Colorado Supreme Court and is set for oral argument on January 20, 2011. A Supreme Court ruling should issue promptly thereafter.)

Division Engineer Jim Hall confirmed the effect of the 403 decree in a letter concerning capture of Beebe Draw seepage by FRICO's Milton Reservoir, stating seepage in the draw is "subject to appropriation." By using the term "subject to appropriation," Mr. Hall means that seepage water cannot be captured except by a decreed water right which is in priority. (Copy attached.)

The decree for Bowles/Meeks Reservoirs specifically excludes the capture of seepage (copy attached). So the Bowles/Meeks decree does not relieve Bowles Reservoir or FRICO from the 403 ruling which says FRICO has no right to seepage.

The decree for Bowles/Meeks is a *storage* decree under Colorado water law (see copy). It allows diversions from the South Platte River only for *storage*. The actual storage capacity appears to be very limited or non-existent, from a careful reading of the Prospectus. Whatever storage capacity there once was appears to be eliminated by the wetlands area. Under Colorado law, a reservoir is limited, each year, to diverting only enough water to fill its actual capacity once. See *Windsor Reservoir and Canal Co. v. Lake Supply Ditch Co.*, 44 Colo. 214, 98 P.729 (1908). The prospectus makes no showing that there is any remaining capacity in Bowles Reservoir, since most or all of the reservoir is included in the wetlands area, and in any event the depth of the former reservoir area appears almost non-existent. Furthermore, a 1907 decree is quite junior, and is generally out of priority during much of the irrigation season, particularly during the critical periods of July, August and September. So the only utility of the Bowles Reservoir decree is to divert its existing capacity (once) during periods of no-call, generally periods in winter, and store the water for release during the irrigation season. Bowles Reservoir cannot lawfully capture seepage and it provides an unknown and possibly non-existent amount of storage for irrigation during the season when irrigation is required. The Bowles reservoir decree simply does not provide the requisite water supply for the Bank. Water diverted under FRICO's 2002 conditional storage right, which was approved in the 403 case, cannot be stored in Bowles Reservoir until an area/capacity curve for the reservoir is provided to the opposers in the 403 case. An area capacity curve is necessary to show the existence of actual capacity. See Section 29 of the initial Court order in the 403 case. (Copy provided upon request.)

Section IV E of the Prospectus makes a somewhat disconnected reference to other decrees which serve to fill Barr Lake, with perhaps an inference that FRICO itself can supply water to Mile High Wetlands Bank which has been diverted on those decrees. The senior decrees which fill Barr

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Lake were the subject of the 403 litigation. In that case all of the water diverted on those decrees was allocated to the existing shareholders of FRICO and the Burlington Ditch Reservoir and Land Company. None was allocated to FRICO itself as an entity. *See, e.g.*, Section 25.4.1 of the decree (copy attached). FRICO's engineering reports filed in that case make the same allocation; *i.e.*, none to the entity itself. (Copy available upon request). Those allocations are consistent with the law applicable to mutual ditch companies, which is that the shareholders (not the mutual ditch company), own the water rights of a mutual ditch company and receive the water diverted on its decrees. *See Jacobucci v. District Court* 189 Colo. 380, 541 P.2d 667 (1975). FRICO is a mutual ditch company. FRICO is precluded from issuing additional shares without a super-majority vote of the directors by the terms of its articles. The same principle applies to the Bowles Reservoir decree, which as noted is owned by FRICO. The FRICO shareholders (not FRICO) have the right to any water stored therein.

So unless Mile High Wetlands Bank LLC can show that it owns shares in FRICO, FRICO itself cannot provide water to Mile High Wetlands Bank from the senior Barr Lake rights which were the subject of the 403 litigation, or from the Bowles Reservoir decree. The remaining rights which divert through or into Barr Lake are very junior in priority, being 1984 rights and 2002 rights. They are inadequate to provide the requisite dependable supply for Mile High Wetlands Bank.

Finally, a close reading of page 11 of the Prospectus and the associated plans indicates that Areas 2 and 3 will be excavated to a level one-half foot below that of the adjacent Phase One. It appears that the result of the excavation will likely be the exposure of groundwater to the atmosphere. Further investigation of the possibility of that result should be made, because under Colorado water law, excavation which exposes ground water to the atmosphere is the construction of a well which requires a well permit and an augmentation plan. Neither has been obtained by Mile High Wetlands Bank. *See, e.g., Zigan Sand and Gravel v. Cache La Poudre Water Users Assn.* 758 P.2d 175 (Colo. 1988); *Three Bells Ranch v. Cache La Poudre Water Users Assn.* 758 P.2d 164 (Colo. 1988).

I suggest that this letter be referred to the Office of the State Engineer, Colorado Division of Water Resources, for comment and consideration.

I will be happy to respond to any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "David G. Hill", written in a cursive style.

David G. Hill

DISTRICT COURT, WATER DIVISION NO. 1, COLORADO 901 9 th Avenue Greeley, CO 80631-1113	EFILED Document – District Court 2002CW403 CO Weld County District Court 19th JD Filing Date: May 11 2009 11:47AM MDT Filing ID: 25116017 ▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF FARMERS RESERVOIR & IRRIGATION CO., BURLINGTON DITCH, RESERVOIR & LAND CO., HENRYLYN IRRIGATION DISTRICT, UNITED WATER & SANITATION DISTRICT, and EAST CHERRY CREEK VALLEY WATER & SANITATION DISTRICT IN ADAMS, ARAPAHOE, DENVER, DOUGLAS, ELBERT, JEFFERSON, and WELD COUNTIES	
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECREE	

This Application comes before the Court on several water rights claims by the Co-Applicants listed in Paragraph 2, and a contract dispute filed in Case No. 02CW403. A 16-day trial to the Court was held between April 21, 2008 and May 13, 2008. Having reviewed and considered the pleadings, lay and expert testimony, documentary and other evidence, and the arguments of counsel, the Court makes the following Findings of Fact, Conclusions of Law, and Decree (“Decree”).

1. Findings of Fact, Conclusions of Law and Order. The Court has previously entered its Findings of Fact, Conclusions of Law and Order dated September 5, 2008 (“Findings”). This Decree is based upon the Findings, which are fully incorporated in this Decree.

I. FINDINGS OF FACT

2. Co-Applicants. The Co-Applicants in this case are:

- 2.1 Farmers Reservoir and Irrigation Company(“FRICO”)
 - 80 South 27th Ave.
 - Brighton, CO 80601
 - 303-659-7373;
- 2.2 The Burlington Ditch and Reservoir and Land Company (“Burlington”)
 - 80 South 27th Ave
 - Brighton, CO 80601
 - 303-659-7373;

1918 and November 12, 1924. As set forth in the Court's Findings dated September 5, 2008, Co-Applicants' request for a change of water rights resulted in a requantification of those Burlington-Barr and FRICO-Barr water rights specifically addressed in Paragraphs 22.1.1 through 22.1.4 below. These limitations apply not only to the changed shares, but also to Barr Lake rights, resulting in a requantification of those Barr Lake rights.

22.1 Use and Volumetric Limitation on the Water Rights:

22.1.1 Reservoir releases of the Burlington 1885 storage rights from Barr Lake are limited to the lands under the Hudson and Burlington Extension laterals as they existed in 1909 as depicted in Appendix 3. The annual average 1885 Burlington storage right release from Barr Lake is 5,456 AF after adjustment for disallowed seepage, toe drain discharge and Metro Pumpage, and the cumulative total 20-year release under this right is limited to 109,120 AF. The maximum annual 1885 storage right release from Barr Lake is limited to 8,450 AF.

22.1.2 The annual average 1909 FRICO-Barr storage right release from Barr Lake is 11,616 AF after adjustment for disallowed seepage, toe drain discharge and Metro Pumpage, and the cumulative total 20-year release under this right is limited to 232,320 AF. The maximum annual 1909 FRICO-Barr storage right release from Barr Lake is limited to 21,982 AF.

22.1.3 The annual average 1908 FRICO-Barr direct flow right release from Barr Lake is 4,621 AF after adjustment for disallowed Metro Pumpage, and the cumulative total 20-year release under this right is limited to 92,420 AF. The maximum annual 1908 FRICO-Bar direct right release from Barr Lake is limited to 17,818 AF.

22.1.4 The Court finds that the lawful use of the Burlington 1885 direct flow water is limited to 200 c.f.s. for use above Barr Lake. The annual average 1885 Burlington direct flow right release from Barr Lake is 0 AF, and there is no historical use credit for this water right in the change case.

22.2 Seepage Exclusion. The seepage exclusion that shall be applied to quantification of the historic consumptive use of the shares differs depending on the canal into which the water was historically released from Barr Lake. Shares for water released into East Burlington, West Burlington, Speer, and Neres Canals have been designated Group 1 shares. Shares for water released into the Beebe Canal, including the East Neres and Bowles Seep Canal have been designated Group 2 shares. Because these canal groups historically had different canal losses and return flows, the limits on consumptive use for each group are different. The Court has determined that seepage into the Beebe Draw is also not a lawful source of supply. The quantity of seepage to the Beebe Draw was variously estimated, in the range of 1,200-1,300 AF per year.

22.2.1 The Court has determined that a conveyance loss due to seepage of 44.4 % shall be charged to the changed shares from Group 1.

22.2.2 The Court has determined that a conveyance loss due to seepage of 47% shall be charged to the changed shares from Group 2.

22.3 Toe Drain Exclusion. The Court has determined that the discharge from the Barr Lake toe drains to the Beebe Draw is not a decreed or lawful source of supply. The Court determines that Co-Applicants may not include toe drain seepage as part of the quantification of the 1885 Burlington and the 1908 and 1909 FRICO water rights during the study period determined for the water rights to be changed in this Application. The annual average toe drain seepage was 1,304 AF during the representative period applicable to the 1908 and 1909 water rights (1927-1983). Toe drain seepage shall be deducted from the historical release of water to the shares that are the subject of this application.

22.4 The amount of storage water allowed for each storage right during any November 1 through October 31 period shall be limited as described in Paragraphs 24 and 25. The 1909 Refill Decree can be exercised by Co-Applicants only after the first one-filling is accomplished for the senior decrees associated with the Changed Shares (subject to the limitations in Paragraphs 24 and 25), and after space is made available by release from Barr Lake, or by seepage or evaporation after May 15 of each year.

23. Standard of Approval of Change of Water Right. Pursuant to § 37-92-305(3)(a), C.R.S., a change of water right must be approved if such change will not injuriously affect the owner or of persons entitled to use of vested water rights or decreed conditional water rights. In making its determination of non-injury in this case and in setting forth terms and conditions that are sufficient to protect vested water rights and decreed conditional water rights, the Court has made extensive Findings of Fact and Conclusions of Law as referenced in Paragraph 1 of this Decree. The Findings are incorporated into this Decree and provide the factual findings and legal conclusions for the quantification of the Changed Shares and the terms and conditions applicable to the use of the Changed Shares as set forth below.

24. Approval and Decree of Change of Water Rights. Quantified as set forth in this decree, and subject to the terms, conditions, and limitations as provided in this decree, the use of the Changed Shares will not injuriously affect vested water rights or decreed conditional water rights. The Court therefore approves and decrees the change of use for the Changed Shares as set forth below:

24.1 Place and Type of Use for Changed Shares. The Changed Shares are hereby decreed for use as replacement of out-of-priority depletions from the ECCV Well Field according to the terms of the Plan set forth in Paragraphs 14-20.

24.2 Study Period.

24.2.1 For the 1885 Burlington direct flow water right, the study period was 1885-1909.

24.2.2 For the 1885 Burlington storage water right (also known as the 1885 Oasis-Barr Lake storage right), the study period was 1927-2004.

24.2.3 For the 1908 and 1909 FRICO water rights, the study period was 1927-1983.

24.3 Historical Deliveries. Historical deliveries to shareholders, for the purpose of determining the amount of lawful beneficial historical use available for change, shall be limited to the amount of water released from Barr Lake as reflected in the FRICO records less conveyance losses as defined below.

24.4 Metro Pump Deliveries. The Court determined that deliveries from the Metro Pumps during the determined study period, 1969 to 2007, as explained and determined in the Order, must be deducted from the Co-Applicants' historical use before the Court can approve the change of water right to new uses, new places of use, or any alternate point of diversion. Co-Applicants must reduce the amount diverted at the Burlington headgate by 9,600 AF per year, from 1969 to 2004, in the quantification of the historical consumptive use of those water rights. This deduction shall be made *pro rata* from the 1885 Burlington Storage Right, the 1908 FRICO Direct Flow Right, and the 1909 FRICO Storage Right.

24.5 Conveyance Loss. The historical conveyance loss for the water discharged from Barr Lake to Group 1 Canals is 44.4%. The historical conveyance loss for the water discharged from Barr Lake to Group 2 Canals is 47%.

24.6 Irrigation Efficiency. The Court finds that the irrigation efficiency of the Changed Shares is 50%.

25. Quantification of Historic Use of the Changed Shares. The maximum annual releases, set forth below shall not be exceeded for the 1885 Burlington Storage Right, the 1908 FRICO Direct Flow Right, and the 1909 FRICO Storage Right.

25.1 Historical return flows from the Changed Shares shall be replaced to Beebe Canal, Box Elder Creek, or South Platte River in accordance with unit response function (URFs) values developed through the use of the MODFLOW Model, to which the parties have stipulated. The URFs for each parcel will be set forth in the URF Table. The return flows referenced above shall not be re-diverted from the Beebe Canal or any other FRICO system laterals. This Decree does not adjudicate rights to these return flows.

25.2 Diversions. Changed Shares shall be diverted at the Burlington Headgate or at the Alternate Points of Diversion, approved in Section VI of this Decree, consistent with the terms and conditions approving Alternate Points of Diversion.

25.3 Annual Allocations to Shareholders. The Burlington Company and FRICO shall continue to quantify the allocations of water made to each Changed Share at the farm headgate where the water is delivered. Based on the Farm Headgate Allocation, Co-Applicants shall compute a Reservoir Release Allocation, which is equal to the Farm Headgate Allocation divided by 0.556, representing a 44.4% ditch loss, unless delivered



DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

April 26, 2010

Manuel Montoya
Manager
Farmers Reservoir and Irrigation Company
80 S. 27th Ave.
Brighton, CO 80601

Bill Ritter, Jr.
Governor

James B. Martin
Executive Director

Dick Wolfe, P.E.
Director/State Engineer

James R. Hall, P.E.
Division Engineer

Dear Mr. Montoya:

I am writing this as a follow up to discussions we have had concerning the administration of Beebe Draw and specifically Milton Reservoir. In Case No. 02CW403, the Water Court found that seepage and return flows into Beebe Draw were subject to appropriation. Even without this finding, a reservoir is only entitled to store water under its decrees. Thus, Farmers Reservoir and Irrigation Company (FRICO) must release all inflows into Milton at times Milton is not filling by decree if there is a call downstream on the South Platte. Timing of releases shall be at the direction of the Water Commissioner, Scott Edgar.

FRICO must also maintain accounting to document water stored out-of-priority is released. As it is difficult to measure all inflows, accounting should be based on a water balance at least initially. This is similar to what is done for Chatfield. For this type of accounting FRICO must have a stage capacity curve for Milton and keep track of the stage of the reservoir, storage amounts, evaporation, releases to use, and releases back to the natural drainage. As part of the accounting, please coordinate with Scott Edgar concerning how FRICO will determine necessary releases to assure evaporation from the reservoir surface does not deplete the natural flow available for use by other appropriators.

All releases from the reservoir must also be measured and recorded below the reservoir such that FRICO assures that no water is used out-of-priority by users under the Gilmore ditch.

It is my understanding that you have already discussed necessary measuring devices and recorders with Scott Edgar. Completion of the installation must be within 30 days of the date of this letter. Please contact Scott Edgar or me with any questions you may have.

Sincerely

James R. Hall, P.E.
Division Engineer

CC: Scott Edgar, Water Commissioner
Bob Stahl

Water Division 1 • Greeley
810 9th Street, Suite 200 • Greeley, CO 80631 • Phone: 970-352-8712 • Fax: 970-392-1816
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use aforesaid for the benefit of the parties lawfully entitled thereto, under and by virtue of appropriations by original construction and use, amounts of water by Reservoir Priority numbers and dates as follows:

Mildred Lake by Reservoir Priority No. 28, of date December 15, 1905, the amount it will hold at 12 feet storage depth and 85 acres high water line area, not to exceed 420 acre feet annually;

Henry Reservoir by Reservoir Priority No. 33, of date January 24, 1907, the amount it will hold at 12 feet storage depth and 25 acres high water line area, not to exceed 100 acre feet annually;

Geneva Reservoir by Reservoir Priority No. 27, of date September 16, 1905, the amount it will hold at 10 feet storage depth and 15 acres high water line area, not to exceed 55 acre feet annually;

Bowles Reservoir No. 1 by Reservoir Priority No. 34 of date January 30, 1907, the amount it will hold at 10 feet storage depth and 140 acres high water line area, not to exceed 700 acre feet annually;

Meek Reservoir No. 1 by Reservoir Priority No. 35 of date January 31, 1907, the amount it will hold at 3 feet storage depth and 30 acres high water line area, not to exceed 60 acre feet annually;

Meek Reservoir No. 2 by Reservoir Priority No. 36 of date January 31, 1907, the amount it will hold at 4 feet storage depth and 46 acres high water line area, not to exceed 92 acre feet annually;

Curtis Lake by Reservoir Priority No. 37 of date April 14, 1908, the amount it will hold at 4 feet storage depth and

into the Beebe Canal in which case the Reservoir Release Allocation shall be equal to the Farm Headgate Allocation divided by 0.53, representing a 47% ditch loss, and a Consumptive Use Credit Allocation, equal to 50% of the Farm Headgate Allocation. The Reservoir Release Allocation and the Consumptive Use Credit Allocation shall be further restricted to the annual volumetric limits set forth below in Paragraph 25.4.

25.4 Annual Volumetric Limits for Changed Shares. The following annual volumetric limits shall apply to the future use of the Changed Shares.

25.4.1 Limits on Releases from Barr Lake. The maximum annual Reservoir Release Allocation for the Burlington-Barr shares is 3.99 AF per share or 255.7 AF for the 64.083 changed shares, and the maximum annual Reservoir Release Allocation for FRICO-Barr shares is 16.25 AF per share (of which 1.82 AF is attributed to the Burlington 1885 water storage right) or 2,286.4 AF for the 140.702 changed shares. The 20-year cumulative total Reservoir Release Allocation is limited to 51.72 AF per share for Burlington-Barr shares or 3,314.4 AF for the 64.083 changed shares, and 141.20 AF per share for FRICO-Barr shares (of which 23.59 AF is attributed to the Burlington 1885 water storage right) or 19,867.1 AF for the 140.702 changed shares. These figures represent a pro-rata allocation based on a total of 2,111 Burlington-Barr shares (1,258.67 of which are currently owned by FRICO) and the current water right composition represented by FRICO-Barr shares. Co-Applicants shall invoke retained jurisdiction pursuant to paragraph 51 to adjust these limits if the water right composition represented by the FRICO-Barr shares changes. For the 10 years prior to the initial exercise of these changed rights, the average annual values for releases based on the 20-year cumulative total shall be used in the calculation of the cumulative total. The following table summarizes these limitations:

	Maximum Annual Reservoir Release per Changed Share (AF/changed share)	Maximum Annual Reservoir Release for All Changed Shares (AF)	20-Year Cumulative Total Release per Changed Share (AF/changed share)	20-Year Cumulative Total Release for All Changed Shares (AF)
Burlington-Barr (64.083 shares)	3.99	255.7	51.72	3314.4
FRICO-Barr (140.702 shares)	16.25	2286.4	141.2	19867.1
FRICO-Barr water attributed to Burlington's 1885 Barr Storage Right	1.82	--	23.59	--

25.4.1.1 Limits on Consumptive Use. The maximum annual Consumptive Use Allocation for the Burlington-Barr shares is 71.1 AF for the 64.083 changed shares. The maximum annual Consumptive Use Allocation for the 140.702 changed FRICO-Barr shares is 625.2 AF (of which 70.2 AF is attributed to the Burlington 1885 water storage right). The 20-year cumulative total Consumptive Use Allocation for the 64.083 changed Burlington-Barr shares is limited to 921.5 AF. The 20-year cumulative total Consumptive Use Allocation for the 140.702 changed

FRICO-Barr shares is limited to 5,454.9 AF (of which 909.2 AF is attributed to the Burlington 1885 water storage right). These figures represent a pro-rata allocation based on a total of 2,111 Burlington-Barr shares (1,258.67 of which are currently owned by FRICO) and 2,759.147 FRICO-Barr shares and the current water right composition represented by FRICO-Barr shares. Co-Applicants shall invoke retained jurisdiction pursuant to paragraph 51 to adjust these limits if the water right composition represented by the FRICO-Barr shares changes. For the 10 years prior to the initial exercise of these changed rights, the average annual values for consumptive use based on the 20-year cumulative total shall be used in the calculation of the cumulative total. The following table summarizes these limitations:

	Maximum Annual Consumptive Use for All Changed Shares (AF)	20-Year Cumulative Total Consumptive Use Allocation for All Changed Shares (AF)
Burlington-Barr (64.083 shares)	71.1	921.5
FRICO-Barr (140.702 shares)	625.2	5454.9
FRICO-Barr water attributed to Burlington's 1885 Barr Storage Right	70.2	909.2

25.4.2 Refill Decree. The 1909 Refill Decree can be exercised by Co-Applicants only after the first one-filling is accomplished for the senior decrees associated with the Changed Shares (subject to the limitations in Paragraph 22), and after space is made available by release from Barr Lake, or by seepage or evaporation after May 15 of each year.

25.5 Maintenance of System Losses and Return Flows. Co-Applicants shall replace the return flows and system losses associated with the historical use of the Changed Shares in time, location, and amount pursuant to the terms of this Decree to prevent injury to other water rights. The return flow obligations for the 1885 Burlington Storage Right, the 1908 FRICO Direct Flow Right, and the 1909 FRICO Storage Right shall not be less than the amounts determined by the calculations set forth in Paragraph 25.5.4 below.

25.5.1 Location and Distribution of Return Flows. The United/ECCV farms are situated in the following drainage areas: Beebe Draw above Milton Reservoir, Beebe Draw below Milton Reservoir, Box Elder Creek, and the main stem of the South Platte River. The historical return flows owed to Beebe Draw above Milton Reservoir shall be returned to the Beebe Draw above Milton Reservoir. The return flows owed to the Beebe Draw below Milton Reservoir shall be made to Beebe Draw at a location below Milton Reservoir and at or above the location where return flows historically accrued. The return flows owed to Box Elder Creek shall be made to Box Elder Creek at or above the location where the return flows historically accrue to the South Platte River. The return flows owed to the